

**IN THE TENNESSEE COURT OF APPEALS
FOR THE MIDDLE SECTION, AT NASHVILLE**

IN RE:)	
)	No. M2005-01773-COA-R3-CV
SENTINEL TRUST COMPANY)	
)	Lewis County Chancery No. 4781
)	

**BRIEF OF APPELLEES COMMISSIONER
KEVIN P. LAVENDER AND RECEIVERSHIP MANAGEMENT, INC.,
RECEIVER FOR SENTINEL TRUST COMPANY**

PAUL G. SUMMERS
Attorney General and Reporter

J. GRAHAM MATHERNE (BPR 11294)
Wyatt, Tarrant & Combs, LLP
2525 West End Avenue, Suite 1500
Nashville, TN 37203-1423
(615) 244-0020

MICHAEL E. MOORE
Solicitor General

JANET M. KLEINFELTER (BPR 13889)
Senior Counsel
Financial Division
Office of the Attorney General
425 5th Avenue North
Nashville, TN 37243
(615) 741-7403

*Counsel for Appellees Commissioner Kevin P. Lavender and
Receivership Management, Inc., Receiver for Sentinel Trust Company*

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ISSUES PRESENTED FOR REVIEW

- I. Did the Commissioner Have the Authority to Sell the Bellevue Property, Upon Approval of the Receivership Court?**
- II. Did the Receivership Court Err in Approving the Sale of the Bellevue Property as Part of the Orderly Liquidation of Sentinel Trust Company?**

STATEMENT OF THE CASE

The action pending in the Lewis County Chancery Court (In re: Sentinel Trust Company; Case No. 4781) is an administrative receivership action (hereinafter “Receivership Action” or “Receivership Court”), wherein possession over Sentinel Trust Company has been assumed by the Commissioner of the Tennessee Department of Financial Institutions, pursuant to T.C.A. § 45-2-1501, et seq. The Receivership Action was commenced on May 18, 2004, pursuant to T.C.A. § 45-2-1502(b)(1), through the filing of a Notice of Possession of Sentinel Trust Company with the Chancery Court for Lewis County, Tennessee. On that same day, the Commissioner appointed Receivership Management, Inc. as Receiver over Sentinel Trust Company, pursuant to T.C.A. § 45-2-1502(b)(2). One month later, on June 18, 2004, the Commissioner gave notice of the liquidation of Sentinel Trust Company through the filing in the Receivership Court of the Notice of Liquidation of Sentinel Trust Company pursuant to T.C.A. § 45-2-1502(c)(2).

From that point forward, the Commissioner and Receiver have proceeded with the orderly liquidation of Sentinel Trust Company. Those efforts included the transferring of fiduciary positions held by Sentinel Trust Company on non-defaulted bond issues, which was approved by the Receivership Court and which, in turn, has given rise to another appeal pending before this Court brought by the former management of Sentinel Trust Company, led by its

former president, Danny N. Bates,¹ -- In re: Sentinel Trust Company, Case No. M2005-00031-COA-R3-CV (Lewis County Chancery No. 4781).²

As part of the efforts to liquidate Sentinel Trust Company, and pursuant to statutory authority set forth in T.C.A. § 45-2-1502(b) and T.C.A. § 45-2-1504, the Commissioner and Receiver, on May 2, 2005, filed a Motion for Approval of Sale of Sentinel Trust Bellevue, Tennessee Property and to Certify Order Approving Sale as Final Pursuant to Rule 54.02 Tenn.R.Civ.P. (“Bellevue Sale Motion”) (Vol. I, pp. 2-30).³ On May 20, 2005, Mr. Bates filed Objections to the Bellevue Sale Motion. (Vol. I, pp. 31-48). The Receivership Court, upon hearing had on May 26, 2005 and through order entered on that date, granted the Bellevue Sale Motion, and certified the order as final pursuant to Rule 54.02 Tenn.R.Civ.P. (Vol. I, pp. 49-50). Mr. Bates filed a timely Notice of Appeal from Final Judgment Approving the Sale of Sentinel’s Bellevue Property on June 14, 2005. Mr. Bates chose not to pursue a stay of judgment, and the sale of the Bellevue Property, with prior notice to all concerned (including Mr. Bates) closed on July 8, 2005.

¹ The former management of Sentinel Trust Company, i.e., the Appellants herein and elsewhere, will be collectively referred to as “Mr. Bates.”

² As the Court is aware, there is yet another pending appeal arising from the Commissioner’s taking possession of and liquidating Sentinel Trust Company. In that appeal, Mr. Bates is appealing the Davidson County Chancery Court’s dismissal of a petition for certiorari which was filed challenging the Commissioner’s action in taking possession of the company. That pending appeal is Sentinel Trust Company, et al v. Lavender; Case No. M2005-01073-COA-R3-CV (Davidson County Chancery No. 04-1934-I).

³ The appellate record in this appeal consists of two volumes. Reference to the record will identify the volume number and page number -- e.g., Vol. I, p. 12, etc.

STATEMENT OF FACTS

To the extent that factual development is needed regarding the background of Sentinel Trust Company and the justification of the Commissioner's taking possession of Sentinel Trust Company, the Commissioner and Receiver rely upon the Statement of Facts contained in a brief they filed in this Court on May 5, 2005 in the other pending Lewis County Chancery Court appeal (Case No. M2005-00031-COA-R3-CV) as well as the Statement of Facts set forth in the Commissioner's brief filed contemporaneously with this Brief in the third pending appeal (Case No. M2005-01073-COA-R3-CV).

Regarding the factual development related to the sale of the Bellevue Property, the record before this Court is undisputed. First, at the time of the May 18, 2004 institution of the Sentinel Trust Receivership, the Bellevue Property was titled in the name of Sentinel Trust Company and was being used as an office location for conducting the business of Sentinel Trust. (Vol. I, p. 20). It is undisputed that the Bellevue Property, being titled to and owned by Sentinel Trust Company, was an asset of that entity and, thus, under the exclusive management and control of the Commissioner and his appointed Receiver to liquidate. T.C.A. § 45-2-1502(b)(2). Moreover, it was an asset having value in excess of Five Hundred Dollars (\$500) and, thus, pursuant to T.C.A. § 45-2-1504(a)(1), approval of the Receivership Court was required before the Commissioner/Receiver could sell the property as part of the orderly liquidation of Sentinel Trust.

In taking steps to sell the Bellevue Property, the Receiver, acting on behalf of the Commissioner, entered into a listing agreement with the noted Nashville/Middle Tennessee real estate company, Shirley Zeitlin & Company Realtors. The Bellevue Property was placed on the market in November 2004 at a list price of \$320,000. In establishing a fair market list price for

the property, the Receiver relied upon the expertise and recommendation of Ms. Shirley Zeitlin, the owner of Shirley Zeitlin & Company Realtors (Vol. I, p. 16 at ¶ 4). As to the setting of the \$320,000 list price, Ms. Zeitlin states as follows in her Affidavit:

5) The \$320,000 was presented for numerous reasons. I obtained comparables of sales of similarly situated property in the area to obtain information regarding square footage ranges. I took into account the fact that extensive renovations would be required. I considered that the building itself was of average quality with somewhat difficult road access and visibility and that the general, overall development and location were average. Based on these considerations, and based on the years of experience that I have had in selling real estate situated similarly to the Bellevue Property, I recommended a list price of \$320,000.

6) In my opinion, the \$320,000 list price was a fair, reasonable and competitive price for the Bellevue Property. I did not price the property "to sell." Rather, the list price was one that I felt would create reasonable interest in the market.

(Vol. I, p. 17 at ¶¶ 5-6).

For the first four and one-half months that the Bellevue Property was on the market, no interest was shown in the purchase of the property. However, in the March/April 2005 timeframe, two purchase offers were presented -- one for \$305,000 and the other for the full list price of \$320,000.⁴ (Vol. I, p. 17 at ¶ 7). The fact that the two unrelated offers to purchase fell relatively close together further indicates that the list price was in the appropriate fair market range for the property. (Vol. I, p. 17 at ¶ 10).

Mr. Bates can point to nothing in the record that contradicts the fact that the \$320,000 list price was a fair and reasonable price for the Bellevue Property. As pointed out by the Commissioner and Receiver, back in 2002, Mr. Bates had placed the Bellevue Property on the

⁴ The \$305,000 offer was first in time, but that deal was never finalized because the proposed use of the potential purchaser (a dance studio) was vetoed by the office condominium association. Contemporaneous with the \$305,000 offer being presented and ultimately vetoed by the condominium association, the \$320,000 offer was presented. (Vol. I, p. 17 at ¶ 7).

market for \$425,000. But, the evidence in the record certainly dispels that \$425,000 was the fair market value of the property because: a) the 2002 listing at the \$425,000 price resulted in no interest being shown in the property or, at least, none that resulted in an offer or sales contract (Vol. I, p. 21 at ¶ 6) and b) based on what Ms. Zeitlin knew

... about the property's condition and location, and based on my experience in this area, it is my opinion that a list price of \$425,000 would be too aggressive in the present market and would result in no purchaser interest whatsoever. I would also say that a list price significantly greater than the \$320,000 would likely meet with little purchaser interest.

(Vol. I, pp. 17-18).

Moreover, there is nothing in the record that would indicate that keeping the property on the market for some "hoped for" higher offer would have resulted in the Bellevue Property being sold later for a higher amount. Indeed, the only, and undisputed, evidence of record is exactly the opposite. As Ms. Zeitlin stated in her Affidavit:

Based on my experience, it has been my observation that after an initial period on the market (which in my opinion this property [was] close to eclipsing), the longer a property stays on the market, the less likely it is that the property value will appreciate and the more likely it is that the property value will decrease. Therefore, I do not believe that keeping the Bellevue Property on the market for an additional six to twelve months would have resulted in an increase in interest regarding the property and/or its value (absent extensive renovations, the cost of which could have been difficult to recoup dollar for dollar through price increase). Indeed, it would be my expectation that keeping the property on the market would have resulted in a decrease in the purchase price for the property.

(Vol. I, p. 18 at ¶ 11) (brackets added for clarity). Additionally, forgoing the \$320,000 sale would have meant that the Sentinel Trust receivership would have to continue to pay for monthly expenses on the property (e.g., association dues, utilities, insurance and taxes) of approximately \$1,000 per month. (Vol. I, p. 20 at ¶ 5).

ARGUMENT

I. The Commissioner Had Authority to Sell the Bellevue Property, Upon Approval of the Receivership Court

Mr. Bates' own counsel has framed the first issue in this Bellevue Property Sale appeal. In argument before the Receivership Court on the Bellevue Sale Motion, Mr. Bates' counsel said:

[i]f [the Commissioner's] actions are valid . . . , he has the right to sell the property with the Court's approval . . .

(Vol. II, p. 16, at lines 16-18) (brackets added for clarity).

As is clearly shown through the record and through the appellee briefs filed in the other two related and pending appeals, the Commissioner acted within his authority in taking possession of Sentinel Trust Company and has been acting within his authority in proceeding with the orderly liquidation of Sentinel Trust Company. That being the case, counsel for Mr. Bates provides the answer to the first question at bar in this appeal -- the Commissioner (and his appointed Receiver) "had the right to sell the property with the Court's approval."

Not unexpectedly, the overwhelming majority of Mr. Bates' appellate brief in the Bellevue Property Sale appeal addresses arguments relating to jurisdiction, statutory construction, due process, constitutionality of the statutory provisions at issue, correctness of the Commissioner's actions, etc. -- in essence, all of the arguments that Mr. Bates is making in the other two pending appeals. Accordingly, as to all of those issues, the Commissioner and Receiver incorporate and adopt all of the positions set forth in the Commissioner's/Receiver's appellate brief in Case No. M2005-00031-COA-R3-CV (filed on May 11, 2005) and the Commissioner's appellate brief in Case No. M2005-01073-COA-R3-CV (filed October 14, 2005). Based upon that briefing, the Commissioner and the Receiver assert that the pertinent

statutes are free of constitutional infirmity, that the statutory construction arguments presented by Mr. Bates are incredible and without merit, and that the Commissioner's actions in taking possession of Sentinel Trust were constitutional, within his statutory authority, and based on material evidence in the record. In short, the Commissioner's actions were, as Mr. Bates' counsel puts it, "valid" (Vol. II, p. 16, at line 16). Therefore, in liquidating Sentinel Trust, the Commissioner and his appointed Receiver had the right to sell the Bellevue Property upon approval of Court.

II. The Receivership Court Did Not Err in Approving the Sale of the Bellevue Property for \$320,000

A) Proof of Financial Position of the Receivership is not Needed Prior to the Court's Approval of the Sale of an Asset of a Liquidating Trust Company

The sale of the Bellevue Property was pursuant to T.C.A. § 45-2-1504(a)(1), which states that, in liquidating a state-chartered trust company, court approval would be needed to sell an asset of the trust company having a value in excess of Five Hundred Dollars (\$500).

Mr. Bates' first position, stated at pp. 33-34 of his Appellant Brief, is that the Commissioner or Receiver should not be allowed to sell Sentinel Trust property, such as the Bellevue office condominium, without proof presented to the Receivership Court that the Commissioner "has recovered enough money in liquidations to overcome the negatives." Quite frankly, the Commissioner and Receiver struggle, here as elsewhere, to understand what Mr. Bates is saying. But, what seems clear is that Mr. Bates wishes to impose upon the process of orderly liquidation some type of "financial position of the receivership" test.

Respectfully, Mr. Bates misses the point, and misses it widely. The evidence of record in the other pending appeals has amply demonstrated that Sentinel Trust was insolvent and that the Commissioner was within his authority to take possession of Sentinel Trust and liquidate its

assets -- such as the Bellevue Property. No additional showing regarding “overcoming negatives,” or whatever else Mr. Bates alludes to regarding the financial condition of the receivership, is needed prior to the Commissioner being able to sell assets of the trust company. The only additional requirement needed before the Commissioner sells the property is that he gain approval of the Receivership Court if the asset is valued at over \$500. There is simply no requirement that proof of the financial position of the receivership be presented prior to the Commissioner exercising his statutory authority to liquidate an asset of the trust company. Certainly, there can be no error by the Receivership Court in approving the Bellevue Property sale in this regard because there is simply no requirement that the Receivership Court consider the financial position of a receivership prior to approval of the sale of a receivership estate’s assets.

B) Proof of the Reasonableness of the Sale Supports the Receivership Court’s Approval of the Sale of the Bellevue Property for \$320,000

Mr. Bates next argues that the Receivership Court’s approval should not have been given “without requiring an appraisal at market price” of the property. (Bates Appellant Brief, at p. 34). What Mr. Bates cannot demonstrate is where the Receivership Court erred in relation to approval of the purchase price that it was presented. Certainly, Mr. Bates presented no evidence that the fair market price of the property was different than the \$320,000 for which it sold. All that Mr. Bates presents is argument of counsel that what was occurring was a “forced sale” and, thus, the Court should not have approved it.

The Commissioner and Receiver respond on two levels. First, the sale of the Bellevue Property was not a forced sale -- all the evidence of record indicates that it was a full list price sale at a fair market price set by a noteworthy real estate agent, Shirley Zeitlin. Second, the Commissioner and Receiver assert that they are not prevented, in liquidating assets, from seeking

and gaining court approval of the sale of an asset simply because an opponent's notion of "fair market value" is not obtained from the proposed sale transaction.

**(i) *Evidence of Record Supports Reasonableness of
Bellevue Property Sale***

As set forth earlier, the Bellevue Property sold for the full list price of the property. Contrary to Mr. Bates' portrayal that the sale occurred in some "fire sale" context, the property was listed and had been on the market for six (6) months prior to its sale. The \$320,000 list price had been set by a noteworthy Nashville real estate agent, Shirley Zeitlin, after review of comparables and such factors as overall property condition, need for repairs and location. As stated by Ms. Zeitlin, "I did not price the property 'to sell'. Rather, the list price was one that I felt would create reasonable interest in the market." (Vol. I, p. 17 at ¶ 6). Respectfully, Mr. Bates' characterization of the sale of the Bellevue Property as a "forced sale" (see e.g., Vol. II, pp. 12-13) simply underscores the desperation of his position. All of the evidence in the record supports the reasonableness of the sale price and the unreasonableness of rejecting the transaction in the hope of a higher offer. Accordingly, Mr. Bates' arguments, which is all he presents and which do not and cannot trump the undisputed facts in the record, are without merit. The Receivership Court's approval of the Bellevue Property Sale was appropriate and should be upheld.

**(ii) *Mr. Bates Cannot Create a "Fair Market Value"
Prerequisite as to Sales of Property under T.C.A.
§ 45-2-1504(a)(1)***

The second fallacy of Mr. Bates' position is that it would create a requirement, and, thus, a limitation, regarding court approval of a sale of property in a liquidation context -- the requirement being that there must be "fair market value" paid for the property before the Court can approve the sale. Certainly, with court approval being needed for the sale of an asset valued

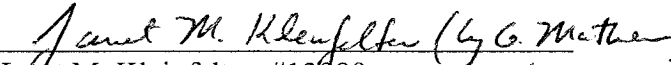
at over \$500, the statutory framework of T.C.A. § 45-2-1504(a)(1) envisions the Receivership Court providing a check upon a receivership estate liquidating assets at low prices without justification. It would be the justification of the purchase price that would be weighed by the court in deciding whether to approve or reject the proposed sale.

What Mr. Bates calls for is dramatic, if not draconian. He apparently maintains that a rule should be established which ties the hands of the Commissioner, Receiver and Court if fair market value is not obtained when selling an asset of a liquidation estate. While the sale of the Bellevue Property does not present such a case, because the \$320,000 amount was a fair and reasonable amount, it is likely that other assets in this receivership or in other receiverships may have to be sold at less than desired amounts. In those instances, the Commissioner and Receiver would present their evidence and position as to why the sale should occur and justify the amount expected from the sale to the Receivership Court. What is not needed, but what Mr. Bates espouses, is a requirement that no court approval be given short of a full fair market sale. To adopt Mr. Bates' argument would restrict the discretion of the Receivership Court in viewing the evidence of any particular proposed sale of an asset. Such is unreasonable and should not be the case in a court approval under T.C.A. § 45-2-1504(a)(1).

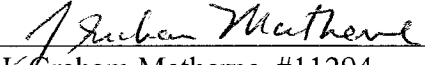
CONCLUSION

For these reasons, this Court should affirm the final order of the Receivership Court approving the sale of the Bellevue Property.

Respectfully submitted,


Janet M. Kleinfelter, #13889 *(by G. Matherne)*
Senior Counsel / Financial Division
Office of the Attorney General
425 5th Avenue North
P.O. Box 20207
Nashville, TN 37243
(615) 741-7403

Counsel for Commissioner, Kevin P. Lavender


Graham Matherne, #11294
Wyatt, Tarrant & Combs, LLP
2525 West End Avenue, Suite 1500
Nashville, Tennessee 37203-1423
(615) 244-0020

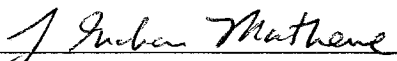
*Counsel for Receivership Management, Inc.,
Receiver of Sentinel Trust Company, in Liquidation*

CERTIFICATE OF SERVICE

This is to certify that on October 14th, 2005 a copy of the foregoing Brief of Appellees has been sent by First Class U.S. Mail, postage prepaid, to:

Carrol Kilgore
Branstetter, Kilgore, Stranch & Jennings
227 Second Avenue, North, 4th Floor
Nashville, TN 37201

Donald Schwendimann
12 East Fourth Avenue
P.O. Box 366
Hohenwald, TN 38462



J. Graham Matherne

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